

USSN 09/967,109  
Attorney Docket No. 3120.00026

REMARKS

Claims 1-24 are currently pending in the application. Claims 1 and 21 are in independent form.

The Office Action states that the proposed drawing changes will not be entered because they introduce new matter into the application. Each structure in the Figures is numbered and corresponds to the structural description in the specification originally filed. There is support throughout the specification for the new claims and support for these drawings are found on page 7, line 23, through page 10, line 12. In this section there is more fully described the locking means and the ball and socket joint of the present invention. Further, these figures depict more specifically the assembly shown in Figures 4 and 5. Additionally, the Office Action states that the limitation "ball and socket joint" in claim 11 is not clearly shown in the drawings. A new drawing that is fully supported by the specification as originally filed is included herewith, more specifically showing the ball and socket joint. Accordingly, since there is support in the specification for the drawings and the newly corrected drawings, reconsideration of the rejection is respectfully requested.

The Office Action states that on page 15 of the Amendment the word "bttl" appears to have no meaning. However, bttl is an abbreviation for "ball to target line" as indicated by the phrase "hereinafter bttl" as defined in the specification at page 12, lines 26-27. Reconsideration of the rejection is respectfully requested.

Claim 2 stands rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicant regards as the invention. Claim 2 has been amended to provide sufficient structure and reconsideration of the rejection is respectfully requested.

Claims 1-7, 9, 12-16, 19, and 20 stand rejected under 35 U.S.C. §102(b) as being anticipated by the Cole patent. Reconsideration of the rejection under 35 U.S.C. §102(b), as anticipated by the Cole patent, as applied to the claims is respectfully requested. Anticipation has always been held to require absolute identity in structure between the claimed structure and a structure disclosed in a single reference.

USSN 09/967,109  
Attorney Docket No. 3120.00026

In Hybritech Inc. v. Monoclonal Antibodies, Inc., 802 F.2d 1367, 231 U.S.P.Q. 81 (Fed. Cir. 1986) it was stated: "For prior art to anticipate under §102 it has to meet every element of the claimed invention."

In Richardson v. Suzuki Motor Co., Ltd., 868 F.2d 1226, 9 U.S.P.Q.2d 1913 (Fed. Cir. 1989) it was stated: "Every element of the claimed invention must be literally present, arranged as in the claim."

The Office Action states that the Cole patent discloses a golf swing indicator comprising attachment means for attaching a support member adjacent to the shoulder of a golfer, wherein the support member has a shoulder position indicator means/arm projecting outwardly therefrom and forwardly relative to the golfer, and that the golf training aid is used for indicating the shoulder turn during the takeaway in the back swing. Additionally, the Cole patent discloses an indicator arm that is an elongated member and is substantially perpendicular to the shoulder of the golfer. The indicator arm includes a resilient member and is a device made of a resilient and flexible plastic sheet. The shoulder position indicator means is adjustably secured to the support member using Velcro. Also provided by the Cole patent are position retaining means, an indicator member, a pad, a support member that is located over the forward shoulder of the golfer relative to the swing, attachment means including a harness mechanism, a shoulder position indicator means including a first indicator member that is supported by the indicator arm, and the second indicator member located adjacent to the shoulder of the golfer.

It is undisputed that the Cole patent describes a device indicating "a proper or improper arm orientation" as stated in columns 3 and 4 of the Cole patent. However, one's arms move independently from one's shoulders and therefore the device of the Cole patent does not give an indication of shoulder turn, but merely indicates the position of the arms. The device of the Cole patent is located on the upper arm or leg of a golfer and therefore the movement of the shoulder cannot be determined since it is the movement of the golfer's arms or legs that are being indicated. The cited prior art does not disclose a device that remains visible to the golfer and that fits on the shoulder of the golfer for indicating proper golf swing.

USSN 09/967,109  
Attorney Docket No. 3120.00026

The present invention solves a problem regarding the ability to provide accurate information of the shoulder turn without giving any indication of arm movement. As described on page 6, lines 29-31, of the present invention, "A typical back swing associated with many mid-to-high handicap golfers may comprise lifting only the arms." The device of the Cole patent will not reveal this problem since the indicator of the Cole patent moves correctly as a result of arm movement, thus indicating that this swing is correct, but the golfer may have an incorrect shoulder turn or no shoulder turn at all.

Additionally, the present invention also indicates the essential transfer weight onto the back foot, which is required for a correct golf swing. Referring specifically to the device of the Cole patent, the disclosed device relies on the relative movement between the indicator and the face of the golfer. See, for example, column 2, which discloses that the device of the Cole patent relies on the indicator being obscured from the vision of the golfer. If one were to take the device of the Cole patent and attempt to use it to indicate the shoulder turn of a golfer, the indicator would need to be positioned at a location that would go out of the vision of the golfer in order to indicate a correct swing. Therefore, one of skill in the art would not place the indicator of the Cole patent projecting forward from the shoulder, since this placement would always remain in the vision of the golfer and would not indicate a correct swing by going out of the vision of the golfer in accordance with the function of the device of the Cole patent. In contradistinction, the device of the present invention as described at page 11, lines 7-13 and 25-29, remains within the golfer's vision and thereby provides more accurate feedback. Additionally, the present invention provides a different method of indicating a correct swing while always remaining visible to the golfer, as opposed to the device of the Cole patent that indicates a proper swing by moving out of the vision of the golfer. By always remaining visible, the feedback is more accurate since once out of the vision of the golfer, the golfer is not made aware of by how much or to what degree the movement is correct or incorrect.

The device of the Cole patent includes a body formed generally as a portion of a cylinder. In order for the device of the Cole patent to fit on the shoulder, it would

USSN 09/967,109

Attorney Docket No. 3120.00026

need to be turned 90° in order for the strap to fasten under the armpit and around the back of the shoulder. In this position, the cylindrical shaped bands could not conform to the shape of the shoulder and would project from the shoulder. This would provide a very insecure attachment to the shoulder and the edges of the cylindrical body would tend to dig into the shoulder. Additionally, the indicator would tend to move relative to the shoulder and would therefore not function so as to reflect the shoulder movement. Since the Cole patent neither describes nor suggests the golf training aid of the present invention, the claims are patentable over the Cole patent and reconsideration of the rejection is respectfully requested.

Claims 8 and 10 stand rejected under 35 U.S.C. §103(a) as being unpatentable over the Cole patent in view of the Lazier patent. Reconsideration of the rejection under 35 U.S.C. §103(a) over the Cole patent in view of the Lazier patent, as applied to the claims, is also respectfully requested.

As stated above, the Cole patent does not disclose a training aid for use in indicating shoulder turn. Instead, the Cole patent discloses a device for use in indicating proper or improper arm swing. Therefore, the Cole patent neither discloses nor suggests the aid of the presently pending claims.

With regard to the Lazier patent, the Lazier patent relates to a torso and back rotation indicator that projects from the golfer's back and extends laterally to the golfer's side. As can be seen in Figures 6A-F of the Lazier patent, the indicator is not always visible since it does not project forwardly from the golfer. The main advantage of the present invention is that it projects forwardly from the shoulder of the golfer and thereby indicates the shoulder turn by always remaining visible to the golfer. The cited prior art reference does not disclose a device that remains visible to the golfer and that fits on the shoulder of the golfer for indicating proper golf swing. Since neither the Lazier nor the Cole patent, alone or in combination, teach or suggest the golfer training aid of the present invention, the claims are patentable over the cited prior art references and reconsideration of the rejection is respectfully requested.

USSN 09/967,109  
Attorney Docket No. 3120.00026

Claim 11 stands rejected under 35 U.S.C. §103(a) as being unpatentable over the Cole patent in view of the Stawicki patent. Reconsideration of the rejection under 35 U.S.C. §103(a) over the Cole patent in view of the Stawicki patent, as applied to the claims, is also respectfully requested.

As stated above, the Cole patent does not disclose a training aid for use in indicating shoulder turn. Instead, the Cole patent discloses a device for use in indicating proper or improper arm swing. Therefore, the Cole patent neither discloses nor suggests the aid of the presently pending claims.

With regard to the Stawicki patent, the Stawicki patent provides a device to permit a golfer to achieve a proper golf swing by avoiding undesired bending in the front elbow of the golfer. This therefore does not relate to the shoulder turn indicator at all. The cited prior does not disclose a device that remains visible to the golfer and that fits on the shoulder of the golfer for indicating proper golf swing. Accordingly, neither the Cole nor Stawicki patents, either alone or in combination, teach or suggest the golf training aid of the present invention. Therefore, the presently pending claims are patentable over the cited prior art references and reconsideration of the rejection is respectfully requested.

Claims 17 and 18 stand rejected under 35 U.S.C. §103(a) as being unpatentable over the Cole patent in view of the Stawicki and Pritchard et al. patents. Reconsideration of the rejection under 35 U.S.C. §103(a) over the Cole patent in view of the Stawicki and Pritchard et al. patents, as applied to the claims, is also respectfully requested.

As stated above, the Cole patent does not disclose a training aid for use in indicating shoulder turn. Instead, the Cole patent discloses a device for use in indicating proper or improper arm swing. Therefore, the Cole patent neither discloses nor suggests the aid of the presently pending claims.

With regard to the Stawicki patent, the Stawicki patent provides a device to permit a golfer to achieve a proper golf swing by avoiding undesired bending in the

USSN 09/967,109  
Attorney Docket No. 3120.00026

front elbow of the golfer. This therefore does not relate to the shoulder turn indicator at all.

The Pritchard et al. patent provides an inflatable pad for cushion of a strap and is not directed towards a golf shoulder turn indicator. The cited prior art does not disclose a device that remains visible to the golfer and that fits on the shoulder of the golfer for indicating proper golf swing. Further, even if it were combined with the aids disclosed by the Stawicki or the Cole patents it would not provide the aid of the present invention. Since neither the Cole, Stawicki, or Pritchard et al. patents alone or in combination, describe nor suggest, the aid of the presently pending application, the claims are patentable over the cited prior art references and reconsideration of the rejection is respectfully requested.

Claims 21-24 stand rejected under 35 U.S.C. §103(a) as being unpatentable over the Cole patent. Reconsideration of the rejection under 35 U.S.C. §103(a) over the Cole patent, as applied to the claims, is also respectfully requested.

The Office Action states that the Cole patent describes obvious steps that are used when using the device of the Lazier patent. The Office Action states that the Cole patent discloses a golf swing indicator comprising attachment means for attaching a support member adjacent to the shoulder of a golfer, wherein the support member has a shoulder position indicator means/arm projecting outwardly therefrom and forwardly relative to the golfer, and that the golf training aid is used for indicating the shoulder turn during the takeaway in the back swing. Additionally, the Cole patent discloses an indicator arm that is an elongated member and is substantially perpendicular to the shoulder of the golfer. The indicator arm includes a resilient member and is a device made of a plastic sheet that is a resilient and flexible material. The shoulder position indicator means is adjustably secured to the support member using Velcro. Also provided by the Cole patent are position retaining means, an indicator member, a pad, a support member that is located over the forward shoulder of the golfer relative to the swing, attachment means including a harness mechanism, a shoulder position indicator means including a first indicator member that is supported by the indicator arm, and the second indicator member located adjacent to the shoulder of the golfer.

USSN 09/967,109

Attorney Docket No. 3120.00026

It is undisputed that the Cole patent clearly describes a device indicating "a proper or improper arm orientation" as stated in columns 3 and 4 of the Cole patent. However, arms move independently from shoulders and therefore the device of the Cole patent does not give an indication of shoulder turn, but merely indicates the position of the arms. The device of the Cole patent is located on the upper arm or leg of a golfer and therefore the movement of the shoulder cannot be determined since it is the movement of the arms that is being indicated. The present invention solves a problem, namely the ability to provide accurate information of the shoulder turn without giving any indication of arm movement. As described on page 6, lines 29-31, of the present invention, "A typical back swing associated with many mid-to-high handicap golfers may comprise lifting only the arms." The device of the Cole patent will not indicate this problem since the indicator of the Cole patent moves correctly as a result of arm movement, thus indicating that this swing is correct, but the golfer may have an incorrect shoulder turn or no shoulder turn. Additionally, the present invention also indicates the essential transfer weight onto the back foot, which is required for a correct golf swing. Referring specifically to the device of the Cole patent, this device relies on the relative movement between the indicator and the face of the golfer. See, for example, column 2, which discloses that the device of the Cole patent relies on the indicator being obscured from the vision of the golfer. If one were to take the device of the Cole patent and attempt to use it to indicate the shoulder turn of a golfer, the indicator would need to be positioned at a location that would go out of the vision of the golfer in order to indicate a correct swing. Therefore, one of skill in the art would not place the indicator of the Cole patent projecting forward from the shoulder, since this placement would always remain in the vision of the golfer and would not indicate a correct swing by going out of the vision of the golfer in accordance with the function of the device of the Cole patent. In contradistinction, the device of the present invention as described at page 11, lines 7-13 and 25-29, remains within the golfer's vision and thereby provides more accurate feedback. Additionally, the present invention provides a different method of indicating a correct swing while always remaining visible to the golfer, as opposed to the device of the Cole patent that indicates a proper swing by moving out of the vision of the golfer. By always remaining visible, the feedback is more accurate

USSN 09/967,109  
Attorney Docket No. 3120.00026

since once out of the vision of the golfer, the golfer is not made aware of by how much or to what degree the movement is correct or incorrect.

The device of the Cole patent includes a body formed generally as a portion of a cylinder. In order for the device of the Cole patent to fit on the shoulder it would need to be turned 90° in order for the strap to fasten under the armpit and around the back of the shoulder. In this position, the cylindrical shaped bands could not conform to the shape of the shoulder and would project from the shoulder. This would provide a very insecure attachment to the shoulder and the edges of the cylindrical body would tend to dig into the shoulder. Additionally, the indicator would tend to move relative to the shoulder and would therefore not function so as to reflect the shoulder movement.

With regard to the Lazier patent, the Lazier patent relates to a torso and back rotation indicator that projects from the golfer's back and extends laterally to the golfer's side. As can be seen in Figures 6A-F of the Lazier patent, that the indicator is not always visible since it does not project forwardly from the golfer. The main advantage of the present invention is that it projects forwardly from the shoulder of the golfer and thereby indicates the shoulder turn by always remaining visible to the golfer. Since neither the Lazier nor the Cole patents, alone nor in combination, teach nor suggest the golfer training aid of the present invention, the claims are patentable over the cited prior art references and reconsideration of the rejection is respectfully requested.

It is respectfully requested that the present amendment be entered in order to place the application in condition for allowance or at least in better condition for appeal. The application is placed in condition for allowance as it addresses and resolves each and every issue that remains pending. The amendments overcoming the rejections under 35 U.S.C. §112 are made exactly as suggested in the Office Action. Claims have also been amended to clearly distinguish over the prior art. The application is made at least in better condition for appeal as the amendment removes many issues, thereby simplifying the issues on appeal. That is, each and every rejection under 35 U.S.C. § 112 has been overcome exactly as suggest in the Office Action. Further, the claims have been amended to more specifically define



USSN 09/967,109  
Attorney Docket No. 3120.00026

the invention while raising no new issues that would require any further searching. Rather, the amendments have been made in view of comments made in the Office Action that clearly distinguish the presently pending claims over the cited prior art. Hence, it is respectfully requested that the amendment be entered.

This amendment could not have been made earlier as the amendment corrects typographical errors and further defines the claims over the prior art in accordance with the suggestions made in the Office Action, the suggestion first being made in the outstanding Office Action. Hence, since there remain no further issues to be resolved, it is respectfully requested that the present amendment be entered.

In conclusion, it is respectfully requested that the present amendment be entered in order to place the application in condition for allowance, which allowance is respectfully requested.

USSN 09/967,109  
Attorney Docket No. 3120.00026

The Commissioner is authorized to charge any fee or credit any overpayment in connection with this communication to our Deposit Account No. 11-1449.

Respectfully submitted,

KOHN & ASSOCIATES, PLLC

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**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being sent via facsimile to Examiner Nini F. Legesse at the U.S. Patent & Trademark Office, Washington, D.C. 20231 at Fax Number: (703) 308-7768 on February 25, 2003.

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USSN 09/967,109  
Attorney Docket No. 3120.00026

**VERSION SHOWING MARKED CHANGES**

**IN THE CLAIMS:**

1. (Twice Amended) A golf training aid for indicating a shoulder turn during a golf swing comprising attachment means for attaching a support member adjacent to a shoulder of a golfer, the support member having shoulder position indicator means projecting outwardly therefrom and forwardly relative to the golfer, said golf training aid affixable to the shoulder, whereby said training aid remains visible throughout use.

2. (Twice Amended) A golf training aid according to claim 1, in which the golf training aid [is for use in] includes an indicator means for indicating the shoulder turn during a takeaway in the back swing.

8. (Amended) A golf training aid [according to claim 7, in which] for indicating a shoulder turn during a golf swing comprising attachment means for attaching a support member adjacent to a shoulder of a golfer, the support member having shoulder position indicator means projecting outwardly therefrom and forwardly relative to the golfer, said golf training aid affixable to the shoulder, whereby said training aid remains visible to the golfer throughout use, the shoulder position indicator is adjustably and pivotally secured to the support member.

10. (Amended) A golf training aid [according to claim 9, comprising] for indicating a shoulder turn during a golf swing comprising attachment means for attaching a support member adjacent to a shoulder of a golfer, the support member having shoulder position indicator means projecting outwardly therefrom and forwardly relative to the golfer, said golf training aid affixable to the shoulder, whereby said training aid remains visible to the golfer throughout use, position retaining means to retain the position of the shoulder position indicator means relative to the support member, and locking means to lock the position of the shoulder position indicator means relative to the support member.

21. (Twice Amended) A method of indicating the shoulder turn of a golfer during a golf swing comprising securing shoulder position indicator means to a

USSN 09/967,109

Attorney Docket No. 3120.00026

shoulder of the golfer, in order for the shoulder position indicator means to project outwardly and forwardly relative to the shoulder of the golfer said golf training aid affixable to the shoulder, whereby said training aid remains visible throughout use.